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No. 94-1318

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1994

IN THE MATTER OF

EDMUND M. HURLEY

BRIEF IN OPPOSITION TO CERTIORARI

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March 3, 1995

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QUESTION PRESENTED FOR REVIEW

This petition presents no federal question for review.

The sole question presented to the court below was a question of state law, namely the proper sanction to be imposed on a Massachusetts attorney who has been convicted of a federal felony.

STATEMENT OF THE CASE

The Petitioner, Edmund M. Hurley, is an attorney admitted to practice before the courts of the Commonwealth of Massachusetts. (App. 2) In July, 1990, he was convicted of the felony of conspiracy in violation of the general conspiracy statute. 18 U.S.C. § 371. The indictment on which he was convicted charged him with conspiracy "to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service . . . in the ascertainment, computation, and collection of income taxes owed by Salvatore M. Caruana." (App. 6, n.3) The evidence presented at his trial was that he assisted Caruana, a drug smuggler, with concealment of large amounts of cash. *United States v. Hurley*, 957 F.2d 1 (1st Cir.), *cert. denied* 113 Sup. Ct. 60 (1992).

Following the conviction, the procedures required by Massachusetts law were followed.[1] After hearing, a single justice of the Supreme Judicial Court entered judgment, imposing an indefinite suspension on Hurley. *Matter of Hurley*, 9 Mass. Att'y Disc. R. 169 (1993) Hurley appealed to the full court, which

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[1] A Petition for Discipline was filed pursuant to S.J.C. Rule 4:01(8) in June, 1990 (App. 6), but proceedings were stayed pending Hurley's appeal. (App. 7) Since Hurley's conviction was for a "serious crime" as defined by S.J.C. Rule 4:01(12), he was temporarily suspended from practice on June 5, 1992, following the decision of the First Circuit. A hearing was held before a 3-member panel of the Board of Bar Overseers of the Supreme Judicial Court on January 5, 1993. The panel reported its findings and recommendation to the full Board, which voted on April 12, 1993, to file an information with the Supreme Judicial Court recommending indefinite suspension. (App. 8)

affirmed the judgment. *Matter of Hurley*, 418 Mass. 649 (1994).

Pursuant to S.J.C. Rule 4:01(18), Hurley will be eligible on June 5, 1997, to apply for reinstatement to practice.

SUMMARY OF THE ARGUMENT

The petitioner presents no federal question for review. The question of whether the Supreme Judicial Court of Massachusetts acted properly in examining the evidence underlying his felony conviction is purely one of state law.

ARGUMENT

Although the petitioner's argument is difficult to follow, he appears to be saying that the Supreme Judicial Court of Massachusetts somehow violated federal law by refusing his invitation to label his crime as "strictly a tax offense." 418 Mass. at 653; App. 11. The Court's action was improper — he seems to say — even though the Court refused to place any catchphrase label on the crime. The Court stated:

> The primary issue we decide is whether the sanction imposed by the single justice is markedly disparate from the sanctions imposed in similar cases.
>
> . . .
>
> We turn to the respondent's argument that we should consider only other 'tax offenses' in deciding whether the disciplinary sanction imposed on him was markedly disparate from the

> sanction imposed by other single justices in similar cases. Our short answer to this argument is that the appropriate level of sanctions does not depend on the catch-phrase that might be used to describe the conduct on which those sanctions are grounded. It is irrelevant to us, and we assume it was to the single justice, whether the respondent's conduct could be labelled a 'tax offense' or 'money laundering.' Instead, we look at the sanctions imposed in factually similar cases, regardless of the label which may be attached to the conduct underlying those cases.
>
> 418 Mass. at 654-55; App. 15-16

The Court compared the facts as stated in the First Circuit opinion with the facts of prior attorney-discipline cases. Based on that comparison, the Court determined that an indefinite suspension was the appropriate sanction. Of particular import was the observation that 38 of 55 attorneys who had been convicted of felonies had been disbarred or had resigned in lieu of disbarment. Hurley was treated more leniently than 69% of the attorneys convicted of felonies.

Hurley makes no reasoned argument why the Supreme Judicial Court's method of analysis was improper. His assertion that the Court should have closed its eyes to the facts recited in the First Circuit opinion and relied on a catchphrase label is frivolous and nonsensical.

The relief which Hurley requests is that the Supreme Judicial Court be instructed to compare his

conviction "with other 'tax offense' cases." (Pet. Cert., p. 54) Presumably he means only with tax offenses, since there is no showing that the Court failed to consider "tax offense" felonies in determining the sanction to be imposed.[2] His request that the Court be prohibited from examining its own precedents is utterly without foundation.

CONCLUSION

Hurley presents no federal question for decision by this court. He cites no constitutional provision which was violated. He refers to no contitutionally-protected right which was ignored. His petition should be denied.

RESPECTFULLY SUBMITTED

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[2]Most of the "tax offense" cases which Hurley brought to the Court's attention were misdemeanor convictions for failure to file returns. There are only three recent "tax offense" felonies, all of which were brought to the Court's attention. *Matter of McCown*, 7 Mass. Att'y Disc. R. 197 (1991) (Aiding and abetting false tax returns; resignation in lieu of disbarment); *Matter of Paris*, 9 Mass. Att'y Disc. R. 257 (1993) (Tax evasion by failure to file; disbarment); *Matter of Jennings*, 7 Mass. Att'y Disc. R. 126 (1991) (Evasion of tax payments by concealment of assets; 18-month suspension). These cases clearly support the Court's decision that an indefinite suspension is appropriate to Hurley's offense.